

NO. 44139-0-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

MASON COUNTY, a Washington municipal corporation, MASON
COUNTY BOARD OF COMMISSIONERS, the legislative body of
Mason County, and REGIONAL DISPOSAL COMPANY,

Appellants,

vs.

ADVOCATES FOR RESPONSIBLE GOVERNMENT, a
Washington nonprofit corporation, and DOES 1-10,

Respondents.

**RESPONSE BRIEF OF RESPONDENTS
ADVOCATES FOR RESPONSIBLE GOVERNMENT**

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I. INTRODUCTION

Advocates for Responsible Government ("ARG") filed this lawsuit against Mason County and the Mason County Board of Commissioners (collectively "Mason County") to prevent a ten to fifteen million dollar (\$10,000,000 - \$15,000,000) contract from going into effect without even giving others an opportunity to be notified, let alone have other proposals considered.

ARG is a nonprofit corporation organized under the laws of the State of Washington and based in Mason County. Jack Johnson, Robert Drexler, Alisha Harrison, Ken VanBuskirk, and Robert Harris were added as parties to the lawsuit, and are members of ARG, as well as residents and taxpayers in Mason County.

ARG filed its Petition after Mason County approved a contract for solid waste export and disposal services with Regional Disposal Company ("RDC") on June 5, 2012. No other proposals or bids were solicited or considered before this contract was approved.

The purpose of this lawsuit was to ensure that the elected government officials of Mason County were acting in the best interests of the taxpayers. Because no other vendors were

considered, we have no way of knowing whether this estimated ten to fifteen million dollar (\$10,000,000 - \$15,000,000) contract with RDC was the best option for Mason County. Mason County was required by statute to let this contract through a statutory process and failed to do so.

Furthermore, the Commissioners were advised at their June 5, 2012, meeting that other vendors were interested in bidding and that some additional review of the contract should take place. Brian Matthews, the interim Public Works Director for Mason County, suggested tabling the vote because there were three companies that would like to bid. Tom Moore, the interim Director of Utilities & Waste Management, suggested convening the Solid Waste Advisory Committee to allow that committee time to review the contract with RDC before it was approved. Despite these requests from Mason County employees, who are presumably the most knowledgeable regarding the solid waste plan for the county, the Commissioners hastily approved this contract without allowing any further time for review or alternative proposals.

ARG asks this Court to affirm the trial court's ruling that Mason County's solid waste contract with RDC was subject to the public

works competitive bidding process in accordance with RCW 36.32.250, or, at the County's discretion, the alternative request for proposal ("RFP") process in accordance with RCW 36.58.090. The original 1993 contract for solid waste export and disposal was put through the competitive bidding process prior to being awarded, and any attempts by Mason County to characterize the 2012 contract as simply an "addendum" are misplaced. Because all prior options to renew the 1993 contract had been exercised, this 2012 contract was a new contract subject to the same statutory requirements as the original.

II. ARGUMENT

- A. Mason County was required to comply with RCW 36.32.250, or alternatively with RCW 36.58.090, in awarding the contract for solid waste export and disposal.

The starting point in the Court's analysis must be to determine the meaning of RCW 36.58.090, as well as 36.32.250 and 36.58.050, and whether these statutes are applicable to the facts of this case. The Appellants argue that solid waste contracts, being within the exercise of a municipality's police power, are not subject to statutory bidding requirements. And while it is true that municipalities have the constitutional authority to enter into solid waste contracts, that

conferment of authority does not absolve the counties from complying with statutory bidding procedures.

The meaning of a statute is a question of law reviewed de novo. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002); *State v. Breazeale*, 144 Wn.2d 829, 837, 31 P.3d 1155 (2001); *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001). The court's fundamental objective is to ascertain and carry out the legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent. *Campbell & Gwinn*, 146 Wn.2d at 9–10, 43 P.3d 4; *J.M.*, 144 Wn.2d at 480, 28 P.3d 720. Under this plain meaning rule, examination of the statute in which the provision at issue is found, as well as related statutes or other provisions of the same act in which the provision is found, is appropriate as part of the determination whether a plain meaning can be ascertained. *Campbell & Gwinn*, 146 Wn.2d at 10–12, 43 P.3d 4; *In re Estate of Lyons*, 83 Wn.2d 105, 108, 515 P.2d 1293 (1973). If, after this inquiry, the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to construction aides, including legislative history. *Campbell & Gwinn*, 146 Wn.2d at

12, 43 P.3d 4; *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 808, 16 P.3d 583 (2001).

1. *County contracts for solid waste export and disposal are subject to RCW 36.32.250.*

Counties must use a competitive bidding process for most municipal contracts. *Washington Waste Systems, Inc. v. Clark County*, 115 Wn.2d 74, 78, 794 P.2d 508 (1990). RCW 36.32.250 states that "[n]o contract for public works may be entered into by the county legislative authority...until after bids have been submitted to the county upon specifications therefor." "'Public work' means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality...". RCW 39.04.010. "Work" is defined as "a specific task, duty, function, or assignment often being a part or phase of some larger activity[.]" Webster's Third New International Dictionary 2634 (1969). RDC's specific task of exporting and disposing of solid waste for Mason County as part of Mason County's comprehensive solid waste plan is "work" that is "executed at the cost of...any municipality" as defined by statute. The fact that the original, identical 1993 contract between Mason County and Regional Disposal

Company ("RDC") was put through a competitive bidding process pursuant to RCW 36.32.250 is a tacit admission that this exact type of contract cannot be entered absent such a procedure.

It is important to distinguish between contracts for garbage and trash collection versus other contracts regarding solid waste. Garbage and trash collection is exempt from the statutory bidding requirements because this function is a matter that public agencies are authorized to address using the best means available to protect the public health. *State ex rel. Citizens Against Tolls (CAT) v. Murphy*, 151 Wn.2d 226, 244, 88 P.3d 375 (2004). This power is conferred upon municipalities because "[t]he accumulation of garbage and trash within a city is deleterious to public health and safety." *Shaw Disposal v. Auburn*, 15 Wn. App. 65, 67-68, 546 P.2d 1236 (1976) (quoting *Davis v. Santa Ana*, 108 Cal. App. 2d 669, 676, 239 P.2d 656 (1952)). However, once that garbage reaches the transfer station, there no longer exists the same risk to public health and safety that permits counties to ignore the normal bidding process. The legislature has made that perfectly clear as evidenced by RCW 36.58.050 which states as follows:

When a comprehensive solid waste plan, as provided in RCW 70.95.080, incorporates the use of transfer stations, such stations shall be considered part of the disposal site and as such, along with the transportation of solid wastes between disposal sites, shall be exempt from regulation by the Washington utilities and transportation commission as provided in chapter 81.77 RCW.

Each county may enter into contracts for the hauling of trailers of solid wastes from these transfer stations to disposal sites and return either by (1) the normal bidding process, or (2) negotiation with the qualified collection company servicing the area under authority of chapter 81.77 RCW.

The contract between Regional Disposal Company ("RDC") and Mason County is for the export of solid waste from the transfer station in Mason County to the Roosevelt Regional Landfill in Klickitat County, Washington. This landfill is owned and operated by Allied Waste Services, which owns RDC. Paragraph 6.1(a) of the contract between RDC and Mason County states that solid waste will be delivered to RDC "at the Transfer Station in Trailers." CP 183-184. Thus, the contract with RDC, insofar as it concerns the transport of solid waste by RDC to the disposal site in trailers, must go through the "normal bidding process" as defined by RCW 36.32.250. Subsection 2 does not excuse the County from this requirement because the "qualified collection company" servicing Mason County is not RDC,

but rather is Mason County Garbage & Recycling. The cases relied upon by Appellants are inapposite with respect to RCW 36.58.050, because no similar statute exists for cities or towns.

2. *RCW 36.58.090 applies to municipal contracts for solid waste export and disposal.*

RCW 36.58.090 is not an alternative to using no bidding process whatsoever, as argued by Appellants. See Opening Brief of Appellant Regional Disposal Company at 35-38. Rather, RCW 36.58.090 was created by the Legislature as a more flexible alternative to the competitive bidding procedure under RCW 36.32.250 for certain solid waste contracts. *Washington Waste Systems, Inc.* at 78; *Organization to Preserve Agr. Lands v. Adams County*, 128 Wn.2d 869, 893, 913 P.2d 793 (1996) ("According to the terms of the statute, a county may enter a contract for the provision of solid waste services *only after* it publishes its requirements and requests submission of proposals.") (emphasis added). The competitive bidding procedure has extremely detailed notice requirements and the county must award the contract to the lowest competitive bidder. RCW 36.32.250. By contrast, the alternative procedure has somewhat less detailed notice requirements and

allows the county to rely on factors other than price when selecting a vendor. RCW 36.58.090(2)-(4).

RCW 36.58.090 sets forth the procedures for a county to follow when contracting with vendors for services for the "design, construction, or operation of, or other service related to, the systems, plants, sites, or other facilities for *solid waste handling*." (Emphasis added). "Solid waste handling" refers to the "management, storage, collection, *transportation*, treatment, utilization, processing, and *final disposal* of solid wastes...". (Emphasis added) RCW 70.95.030(23). The question thus becomes whether solid waste export and disposal is a service related to the operation of plants, sites, or other facilities for the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes.

The Supreme Court has squarely addressed this question and held that contracts for solid waste export and disposal may be let under the RFP process of RCW 36.58.090, rather than the competitive bidding procedure. *See Washington Waste Systems, Inc.* 115 Wn.2d 74. The stated issue in that case was "whether the Legislature authorized the use of the alternative procedure [under RCW 36.58.090] for a solid waste export contract involving recycling

and transfer facilities.” *Id.* at 78. Clark County used the RFP process, rather than the competitive bidding process, to select a vendor for solid waste exporting and disposal. *Id.* at 76-77. Clark County had first considered developing a county-owned landfill. *Id.* at 76. Instead, the County chose to contract with Tidewater Barge Lines (“Tidewater”), which transported the County’s waste to a Tidewater-owned disposal site. *Id.* This contract is identical to the contract entered into between Mason County and RDC. After the trial court ruled that Clark County was required to use the competitive bidding procedure under RCW 36.32.250, the Supreme Court held “that Clark County properly used the alternative bidding procedure” in selecting Tidewater for its solid waste export and disposal. *Id.* The Court never stated in its opinion that Clark County was free to use no bidding procedure whatsoever, as is suggested by Appellants.

At the time that *Washington Waste Systems, Inc.* was decided, the Court determined that the 1986 version of RCW 36.58.090 contained an “ambiguity about the scope of contracts which may be made pursuant to the alternative procedure.” *Id.* at 78. The Court stated that “[t]he statute as a whole is ambiguous as to whether a resource recovery facility must be involved in order to take advantage

of the special bidding procedure.” *Id.* at 79. The Court found that this ambiguity was ultimately clarified by the 1990 legislation which “ma[de] it clear that counties may select vendors of solid waste handling systems and plants through the alternative procedure even if the proposals do not include a ‘resource recovery facility.’” *Id.* Thus, the Court held that the only prerequisite for the applicability of RCW 36.58.090, is that the contract at issue must “involve solid waste systems.” *Id.* at 80.

Likewise, the Court’s decision in *Ventenbergs* supports the conclusion that RCW 36.58.090 applies to contracts for solid waste export and disposal. *Ventenbergs v. City of Seattle*, 163 Wn.2d 92, 178 P.3d 960 (2008). In *Ventenbergs*, the contract at issue only concerned the collection of waste, not the transportation or disposal of waste as is the case here. *Id.* at 98. To determine the meaning of RCW 35.21.156, which is the virtually identical counterpart to RCW 36.58.090 for cities and towns, the Court looked to the surrounding provisions. *Id.* at 106. In particular the Court looked to the language of RCW 35.21.120, which is the counterpart to RCW 36.58.040. RCW 36.58.040 states as follows:

A county may enter into agreements with public or private parties to: (1) Construct, purchase, acquire, lease, add to, alter, extend, maintain, manage, utilize, or operate publicly or privately owned or operated solid waste handling systems, plants, sites, or other facilities; (2) establish rates and charges for those systems, plants, sites, or other facilities; (3) designate particular publicly or privately owned or operated systems, plants, sites, or other facilities as disposal sites; (4) process, treat, or convert solid waste into other valuable or useful materials or products; and (5) sell the material or products of those systems, plants, or other facilities.

The *Ventenbergs* Court stated: "By referring specifically to 'systems, plants, sites, or other facilities,' the statute expressly reaches a subset of services related to solid waste handling...The fact that it refers to these 'systems, plants, sites, or other facilities' as 'disposal sites'...indicates that it is not referencing collection." *Ventenbergs*, 163 Wn.2d at 107. The Court went on to state: "Thus, when this same 'systems, plants, sites, or other facilities' language is used in RCW 35.21.156, it becomes apparent that that provision does not mandate that a city follow the bidding procedures to contract for *all* services related to solid waste handling, but rather it applies only to that particular subset. *Id.* (emphasis in original). In other words, it is mandatory for counties to follow bidding procedures for contracts regarding the subset of services described in RCW 36.58.040.

Because the contract at issue in *Ventenbergs* concerned garbage collection, rather than disposal, the Court held that the bidding statutes did not apply. *Id.*

Further parsing the language of RCW 36.58.040 clarifies that the contract with RDC falls within this subset of services: "A county may enter into agreements with...private parties to...operate...privately owned or operated solid waste handling systems, plants, sites, or other facilities." Here, Mason County has contracted with RDC; a private party who privately owns and operates a solid waste handling site, to wit, the Roosevelt Regional Landfill. There can be no doubt that the Legislature intended for solid waste disposal contracts, such as the one with RDC, to fall within the ambit of the alternative bidding procedure. Mason County was required to put the contract through either the competitive bidding process or the alternative process, and chose neither. This was a violation of the statutory requirements that the trial court took appropriate action to correct.

3. *The trial court never ruled that municipal solid waste contracts are not subject to competitive bidding requirements under RCW 36.32.250.*

Appellants misconstrue the trial court's ruling by stating that the trial court agreed with the proposition that counties may arrange for

solid waste export and disposal services in any reasonable manner, not subject to competitive bidding requirements. See Opening Brief of Appellant Regional Disposal Company at 28-29. The judge stated as follows: "There's no question in my mind that 36.58.090 applies to this type of contract. No question about that in my mind." RP I at 47. As explained above, RCW 36.58.090 is an alternative vendor selection process applicable to certain solid waste contracts. This process may be used as an alternative to the stricter competitive bidding process under RCW 36.32.250. As such, it is impossible for RCW 36.38.090 to apply without RCW 36.32.250 being equally applicable. The trial court was well aware of this fact. When the trial court judge noted that "the county commissioners are not required under the statute to comply with - with lowest competitive bidding. They can do whatever they wish[,] making an intelligent decision[,] RP I at 48, he was simply acknowledging that Mason County was free to utilize the RFP process and could very well award the same contract to the same vendor without violating the statutes. The trial court further highlighted that this case may have been "simply an exercise in futility" given that "the commissioners will have a right to make a decision according to [RCW 36.58.090] to what they feel is

appropriate under the contract.” RP I at 49. Through these statements the judge was merely trying to temper the impact of the ruling by reminding the parties that the contract could again be awarded to RDC with the same terms and conditions as before, so long as the appropriate process was followed.

Similarly, ARG sought relief in its pleadings under RCW 36.58.090 acknowledging that solid waste contracts are eligible for this alternative process. CP 4. The two statutes, RCW 36.32.250 and 35.58.090 are not mutually exclusive. All contracts subject to RCW 36.58.090 are otherwise subject to RCW 36.32.250 if counties elect not to use the RFP process.

B. Advocates for Responsible Government, as well as the individually named Plaintiffs, have standing to challenge the contract between Mason County and RDC.

An organization has standing to bring suit on behalf of its members when: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Am. Legion Post No. 149 v. Dep’t of Health*, 164

Wn.2d 570, 595, 192 P.3d 306 (2008). All three prongs of this test are satisfied here.

1. *Taxpayers have standing to challenge illegal governmental acts.*

Washington courts recognize litigant standing to challenge governmental acts on the basis of status as a taxpayer. *State ex rel. Boyles v. Whatcom County Superior Court*, 103 Wn.2d 610, 614, 694 P.2d 27 (1985). The recognition of taxpayer standing has been given freely in the interest of providing a judicial forum when this state's citizens contest the legality of official acts of the government. *Id.* The value of taxpayer suits generally outweighs any infringement on governmental processes. *Id.* Only when such recognition would encourage unwarranted harassment of public officials have the courts implied that standing would be denied. *Id.*

Case law makes clear that taxpayers are not required to show some particularized injury greater than that suffered by other taxpayers. *Walker v. Munro*, 124 Wn.2d 402, 419-20, 879 P.2d 920 (1994) ("a taxpayer need not allege a personal stake in the matter, but may bring a claim on behalf of all taxpayers."); *City of Tacoma v. O'Brien*, 85 Wn.2d 266, 269, 534 P.2d 114 (1975) ("It is well settled

that taxpayers, in order to obtain standing to challenge the act of a public official, need allege no direct, special or pecuniary interest in the outcome of their action..."); *State ex rel. Boyles*, 103 Wn.2d at 614 (single taxpayer had standing even though the only injury alleged was "one common to all citizens."); *Eugster v. City of Spokane*, 139 Wn. App. 21, 28, 156 P.3d 912 (Div. 3 2007) ("[E]very taxpayer is presumed injured if the [municipality] acts illegally."); (*Dick Enters., Inc. v. King County*, 83 Wn. App. 566, 569, 922 P.2d 184 (Div. 1, 1996) ("a taxpayer may...sue to enjoin the execution or performance of a wrongful public contract...").

The Court has not only permitted taxpayer suits to enforce governmental compliance with bidding procedures for awarding contracts, but has implied that such suits may only be brought by taxpayers. *Dick Enters., Inc.*, 83 Wn. App. at 570. In *Dick Enters., Inc.*, a contractor bidder challenged King County's decision to award a construction contract to another bidder, and the Court stated as follows:

Even where an illegal contract increases expense to the public, bidder injunctions against performance are not the proper way to vindicate public rights. Private suits are motivated by the bidder's desire to rebid and improve its chances to obtain an award. The best way

to ensure that lawsuits are brought in the public interest is to restrict standing to those whose rights are at stake -- the taxpayers.

Id.

This opinion has been held by the Court as far back as 1894, when it considered a suit brought against the City of Everett by a plaintiff in his dual capacity as both a taxpayer and losing bidder on a public contract. *Times Pub. Co. v. City of Everett*, 9 Wash. 518, 520, 37 P. 695 (1894). The Court, in holding that the plaintiff had standing as a taxpayer, but not as a bidder, stated as follows:

[A]gents of municipal corporations must maintain themselves within the law, in the matter of awarding contracts, and if, through fraud or manifest error not within the discretion confided to them, they are proceeding to make a contract which will illegally cast upon taxpayers a substantially larger burden of expense than is necessary, the courts will interfere by injunction to the effect of restricting their action to proper bounds. *Id.* at 522. The Court went on to state that the plaintiff, as a taxpayer, had "a direct and substantial interest in the controversy, as being one who is liable to be taxed, in common with the general public, for the work contracted for, [and] his ulterior motives will not be permitted to disqualify him."

Id. at 524.

Even the Supreme Court has acknowledged that the stringent federal standing requirement is relaxed at the municipal level to allow ordinary taxpayer standing. *ASARCO Inc. v. Kadish*, 490 U.S. 605,

613-14, 109 S. Ct. 2037, 104 L. Ed. 2d 696 (1989) (citing *Massachusetts v. Mellon*, 262 U.S. 447, 486-87, 43 S. Ct. 597, 67 L. Ed. 1078 (1923) ("The interest of a taxpayer of a municipality in the application of its moneys is direct and immediate and the remedy by injunction to prevent their misuse is not inappropriate.")).

The members of ARG would otherwise have standing to sue in their own right as taxpayers of Mason County. RCW 36.58.090, by its own terms, acknowledges the public interest it seeks to protect. RCW 36.58.090(6) ("county shall make written findings, after holding a public hearing on the proposal, that it is in the *public interest* to enter into the contract, [and] that the contract is financially sound...") (Emphasis added). The following members of ARG were permitted to join this suit in their individual capacity: Jack Johnson, Robert Drexler, Alisha Harrison, Ken VanBuskirk, and Robert Harris. All are residents, property owners, and taxpayers in Mason County. As taxpayers, they have a direct interest in requiring Mason County to comply with proper procedures in awarding a multi-million dollar contract (estimated \$10-\$15 million dollars depending on length and tonnage) that has the potential to be in effect for a decade (or forever based on Appellants' theory of contract formation). In addition, the

contract in question went into effect on June 5, 2012, thereby creating a controversy of serious public importance which immediately affected all taxpayers in Mason County.

2. *ARG's interest in protecting the taxpayers of Mason County from illegal government action is germane to the organization's stated purpose.*

The second prong of the organizational standing test is met when an organization is formed for the express purpose that the lawsuit seeks to achieve. *See Mukilteo Citizens for Simple Gov't v. City of Mukilteo*, 174 Wn.2d 41, 46, 272 P.3d 227 (2012). In *Mukilteo Citizens for Simple Gov't* an unincorporated group of Mukilteo residents brought suit against the city to prevent the inclusion of a ballot measure that was alleged to be beyond the scope of the local initiative powers of the city. *See id.* The court, in holding that the group did have standing, stated that the "interest [the organization] seeks to protect (use of red light cameras) is germane to the stated organizational purpose (public safety)..." *Id.*

ARG's mission statement is posted on the group's website and states as follows:

Advocates for Responsible Government is a non-partisan organization committed to ensuring that the residents and businesses of Mason County are

informed, educated and fairly represented by our government. We believe in complete transparency and fiscal responsibility of all government representatives. Mason County citizens must work together as one to continuously improve the community where we live and work, and to that end the Advocates for Responsible Government dedicate themselves to encouraging citizen involvement through community education, the dissemination of truths and political involvement.

See <http://www.savebelfair.info/7.html>. By its own terms, ARG was formed for the purpose of ensuring that the local government in Mason County act in a transparent and fiscally responsible manner. Mason County was neither transparent, nor fiscally responsible in awarding this contract to RDC. There are no public records detailing the negotiations which preceded this contract. Further, because the County Commissioners did not even consider other proposals for the contract, we have no way of knowing whether the contract with RDC is the most fiscally responsible option for the County to pursue. Therefore, requiring Mason County to comply with RCW 36.58.090 is germane to ARG's stated purpose of seeking fair representation, transparency, and fiscal responsibility.

3. *The participation of individual members of ARG was not required to obtain the requested relief.*

The third prong of the organizational standing test is met when the only relief requested is enforcement of a statute. See *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 268 P.3d 892 (2011) (organization of farmers had standing to bring suit concerning the enforcement of Wash. Rev. Code § 90.44.050); *Teamsters Local Union No. 117 v. Dep't of Corr.*, 145 Wn. App. 507, 187 P.3d 754 (Div. 1 2008) (labor union had standing to bring suit concerning the enforcement of the Washington Minimum Wage Act). Because this claim seeks compliance by Mason County with the process for awarding a solid waste contract, neither the claim asserted nor the relief requested requires the participation of individual members of ARG in the lawsuit. Nonetheless, several individual members have joined the lawsuit and would have standing in their own right.

4. *A refusal to act by the Attorney General is not a mandatory prerequisite to gaining taxpayer standing.*

Generally, a taxpayer does not have standing to challenge the legality of the acts of public officers unless he first requests or demands that a proper public official bring suit on behalf of all taxpayers. *Farris v. Munro*, 99 Wn.2d 326, 329, 662 P.2d 821 (1983).

However, the Court has created several exceptions to this requirement.

An exception to the demand requirement exists where a party alleges facts showing that such a demand would have been useless. *Id.* Here, a demand was sent to the Attorney General and that demand was denied. CP 396-98. This denial creates an irrefutable basis for holding that Jack Johnson's taxpayer demand was, in fact, useless. Although the letter was not sent prior to commencement of the suit, it was sent approximately three weeks after filing, and prior to the final hearing and trial court ruling. Mason County argues that the "letter to the Attorney General was deficient in that it failed to allege facts sufficient to justify intervention by the Attorney General." See Opening Brief of Appellant Mason County at 28. This is a fairly remarkable statement considering the arguments presented in this case. If Mason County did nothing wrong in the first place, as they have alleged all along, then what facts could the letter have alleged that would have justified intervention by the Attorney General? On the other hand, if sufficient facts exist to justify intervention, and the letter was deficient, then this statement by Mason County is a tacit admission of wrongdoing.

The Court has also recognized that taxpayer standing questions should be analyzed in terms of the public interests presented:

Where a controversy is of serious public importance and immediately affects substantial segments of the population and its outcome will have a direct bearing on the commerce, finance, labor, industry or agriculture generally, questions of standing to maintain an action should be given less rigid and more liberal answer.

Farris, 99 Wn.2d at 330 (quoting *Washington Natural Gas Co. v. PUD 1*, 77 Wn.2d 94, 96, 459 P.2d 633 (1969)). In the same vein, the Court prefers to reach the substantive issue presented where that "issue is a matter of continuing and substantial interest, it presents a question of a public nature which is likely to recur, and it is desirable to provide an authoritative determination for the future guidance of public officials." *Farris*, 99 Wn.2d at 330 (quoting *Cathcart-Maltby-Clearview Comm'ty Coun. v. Snohomish Cy.*, 96 Wn.2d 201, 208, 634 P.2d 853 (1981)). Here, we have an estimated ten to fifteen million dollar contract that could be in place for a decade (or in perpetuity if Mason County is not required to put the contract through the bidding process).

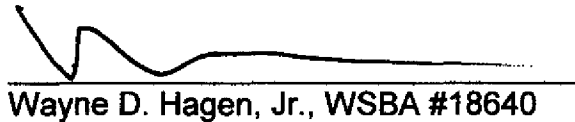
II. CONCLUSION

On the basis of the foregoing, the Advocates for Responsible Government, joined by their individual members, respectfully request that the Court of Appeals affirm the trial court's Judgment and Order Granting Writ of Mandamus and Declaratory Relief.

Respectfully submitted this 25th day of April, 2013.

HAGEN & ASSOCIATES, P.S.
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CERTIFICATE OF SERVICE

I declare under penalty of perjury of the laws of the state of Washington that I am over the age of 18 and not a party to the above-captioned action. That on April 25, 2013, I caused to be served upon counsel listed below in the manner indicated a true and correct copy of the foregoing Response Brief of Respondents Advocates for Responsible Government.


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